

CHARITY COMMISSION
DECISION OF THE CHARITY COMMISSIONERS
FOR ENGLAND AND WALES MADE ON THE 12 SEPTEMBER 2002
APPLICATION FOR REGISTRATION OF THE INTERNET
CONTENT RATING ASSOCIATION

1. ***The issue before the Commissioners***

The Commissioners considered an application by the company called The Internet Content Rating Association (“ICRA”) for registration as a charity. If the company was established as a charity it should be entered on the Central Register of Charities under section 3(2) of the Charities Act 1993.

This decision has been made by the Commissioners in a final review under the Commission’s review procedures.

2. ***Determination***

The Commissioners:

- having considered the case which has been put to them by ICRA including legal submissions and full supporting evidence, and
- having considered and reviewed the relevant law and the governing document and activities of ICRA and the social environment in which it operates,

concluded that ICRA is established for charitable purposes for the benefit of the public as protecting the health and welfare of children and young persons from danger of exposure to inappropriate material on the Internet. In consequence ICRA should be registered as a charity.

3. ***The objects and activities of ICRA***

The principle object for which ICRA is established is:

The advancement of the protection of the public, particularly children and young people and particularly to protect them from harm arising from contact with unsuitable material on the Internet or similar media.

ICRA carries out these purposes by the provision of a system whereby users of the Internet, especially parents of young children, can allow or disallow access to websites based on objective information about the content of the website and the subjective preferences of the user.

The filtering system covers broad topics under the following headings:

- chat;
- the language used on the site;
- the nudity and sexual content of the site;
- the violence depicted on the site;
- others such as gambling, drugs and alcohol.

The system works on a voluntary basis. Web authors who wish to participate are asked specific questions about whether a specific item or feature is present or absent on the website. ICRA then generates a content label (a short piece of computer code) which the author of the website then adds to the site. Over 180,000 sites are now labelled with ICRA.

Thereafter users can set their Internet browsers to allow or disallow access to websites based on the content label. They can also choose to screen out all sites which have not been labelled. The ICRA system can be used with Microsoft's Internet Explorer immediately, and with wider applications under development.

4. **Whether the purposes of ICRA are charitable and for the benefit of the public**

The care and the protection of children who are in some way disadvantaged or defenceless can be a charitable purpose¹.

The Commissioners considered that the availability of the Internet, where there was no control over the content of websites and where sites could be easily accessed by children and young persons, could pose a significant risk to children and young persons who might be in danger of exposure to inappropriate material and contacts. Children and young persons thus represent a vulnerable class in relation to Internet use. There was likely to be a wide range of views about what sort of material may be harmful and to what extent. But the Commissioners considered that there was a general consensus that at least *some* material and contacts available on the Internet would be wholly unsuitable and potentially harmful to children.

¹ In re Cole 1958 Ch 877, Lord Evershed MR at page 92 "*In my judgement, the inference to be drawn from references such as those to the education and preferment of orphans, to schools of learning and free schools, and (perhaps also) to the marriage of poor maids; and the general emphasis in favour of gifts to and for persons suffering from disability and incapacity of various kinds, is that the care and upbringing of children, who for any reason had not got the advantage or opportunity of being looked after and brought up by responsible and competent persons, who could, for these or other reasons, properly be regarded as defenceless or "deprived", are matters which prima facie qualifies charitable purposes.*"

Following their own policy statement on the acceptance of new charitable purposes by a process of analogy², the Commissioners considered that the care and protection of the health and welfare of children and young persons by a facility which enabled controlled access to prevent harm was capable of being a charitable purpose in law.

The Commissioners also considered that although the system promoted by ICRA was voluntary, it nevertheless was capable of having a sufficient impact on child protection in that area to demonstrate that it was for the public benefit.

5. **Private benefit**

The Commissioners considered the extent to which private benefit might be said to arise to organisations who are members of ICRA and which were referred to as such on its own website. ICRA had explained that one of the ways in which it obtains funding for its work is by asking organisations to join it and pay a substantial fee to assist in its work. As a small encouragement the support was acknowledged on its website. ICRA had expressed itself to be willing to arrange to separate out the donation element of the support and charge a fee for those organisations which are commercial which wish to appear on the website if it was felt that the current arrangements were inappropriate.

The Commissioners considered that this and other benefits which might arise to commercial companies being publicly associated with the charity were incidental to its main purpose which in their view is charitable and for the benefit of the public.

6. **The promotion of freedom of expression and the prevention of Government interference**

ICRA's website describes ICRA's "dual aims" as being to

- protect children from potentially harmful material; and
- to protect free speech on the internet.

The first of these aims accurately reflects the principal objects as set out in ICRA's Memorandum. The second aim is not reflected at all in its formal objects, but ICRA explained that the promotion of self regulation in this area was a means through which owners of websites could be persuaded voluntarily to adopt the facility which it was providing. If an effective scheme of voluntary self regulation could be established, this would reduce the possibility of governments or other bodies intervening and establish some form of rating or censorship scheme.

² RRIA, Paragraph 23

ICRA argued that this second “aim” could also be a charitable purpose, since freedom of expression is now one of the public rights protected by the Human Rights Act.

It is true that Article 10 of the European Convention on Human Rights does provide for the right to freedom of expression and this right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority. However, Article 10 is a qualified right, and government restrictions could be justified if they were directed towards one of the legitimate aims specified in Article 10(2) and were necessary in a democratic society in the sense that the interference was a proportional response to a pressing social need. An organisation whose objects were to prevent such interference would therefore have political objects and would not be charitable.

However, this does not affect ICRA’s charitable status. The second “aim” does not form part of the expressed objects of ICRA and ICRA has agreed to remove the references to it from its website.

7. **Conclusion**

The Commissioners therefore concluded that ICRA was a charity and, subject to those changes which it had agreed to make, should be entered on the Register of Charities pursuant to Section 3 of the Charities Act 1993.